

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA**

ATTORNEY GENERAL OF THE STATE)	
OF OKLAHOMA, et al.,)	
)	
Plaintiffs,)	
)	CASE NO.: 05-cv-329-GKF(SAJ)
v.)	
)	
TYSON FOODS, INC., et al.,)	
)	
Defendants.)	

**JOINT BRIEF OF AMICUS CURIAE AMERICAN FARM BUREAU FEDERATION
AND NATIONAL CATTLEMEN’S BEEF ASSOCIATION IN SUPPORT OF
ABSTENTION OF FEDERAL JURISDICTION**

Come now Amicus Curiae American Farm Bureau Federation (“AFBF”) and National Cattlemen’s Beef Association (“NCBA”), referred to collectively as (“Amici”), and respectfully submit this brief asking the Court to deny the State’s motion for a preliminary injunction and to abstain from extending RCRA beyond its reach. If the Court enters the sweeping injunction sought here, a number of significant consequences to Amici’s members will follow, including:

- The imposition of RCRA’s statutory and regulatory framework upon an established farming practice without any judicial precedent and contrary to RCRA’s legislative history and the regulations promulgated thereto;¹
- The obliteration of the comprehensive approach developed by the United States Environmental Protection Agency (“EPA”) and the States of Oklahoma and Arkansas under the Clean Water Act (“CWA”);
- The violation of principles of federal-state comity by the interference with the regulatory schemes of two states;

¹ Whether poultry litter may be considered “solid waste” within the meaning of RCRA is a threshold question and has been briefed fully by the Defendants. *See* Defendants’ Memorandum In Opposition to Plaintiffs’ Motion for Preliminary Injunction, pp. 4-11, adopted and incorporated by reference herein. If the Court is inclined toward further discussion of that issue, Amici would direct the Court to pages 12-13, *infra*.

- The creation of conflicting standards of conduct: those of Oklahoma, Arkansas, the EPA, as well as of this Court, and the complete fractionalization of the regulation of poultry practices.

As this Court is probably aware based upon the number of amici in this case, the potential impact of this case extends well beyond the poultry growers within the Illinois River Watershed (“IRW”) and well beyond the states of Oklahoma and Arkansas. If the Court accepts the novel and expansive interpretation of RCRA that the State advocates, courts around the country could extend that statute to animal manure generated in *any type of farming*. Such a result would work a significant change in the landscape of agricultural operation and regulation, placing a significant burden on farmers, regulators, and courts alike.

I. Unless Allowed Pursuant to A NPDES Permit or the Result of An Agricultural Storm Water Event, Any Discharge or Run-Off From a CAFO Land Application Area Would Be Subject to the CWA and Therefore Exempt from Regulation Pursuant to RCRA

The State’s motion seeks a total ban on the land-application of poultry litter within the IRW and presumes that *any* such application contributes to the alleged degradation of the IRW. In point of fact, however, only that poultry litter that reaches the waters of the IRW through unlawful discharge or run-off can be causally related to the harm alleged. If the State were correct, such practices would implicate the CWA, not RCRA.

RCRA excludes from its coverage activities and substances subject to regulation by the CWA. It states “[n]othing in this chapter shall be construed to apply to...any activity or substance which is subject to the [CWA].”² Moreover, in administering RCRA, the goal is to “avoid duplication, to the maximum extent practicable, with the appropriate provisions of [the CWA].”³ The CWA applies to “any addition of any pollutant to navigable waters from any point

² 42 U.S.C. §6905(a).

³ 42 U.S.C. §6905(b).

source.”⁴ If the operation results in a direct discharge or conveyance into a waterway, a Concentrated Animal Feeding Operation (“CAFO”) is subject to the permitting requirements of the CWA.⁵ However, no permit is generally required for storm water discharges associated with agricultural operations.⁶

If the State’s characterization of the impact to the IRW is correct, then the practices causing such impact would not be excepted from regulation under the CWA. They would be subject to the CWA and RCRA cannot, as a matter of law, be used as the basis of an injunction due to the mandate of non-duplication pursuant to 42 U.S.C. §6905(a). Two of this Court’s sister courts have recently confronted similar situations and concluded that RCRA was inapplicable.

In *Coldani v. Hamm*, the plaintiffs, who owned property adjacent to the Lima Ranch, alleged that the Ranch’s disposal of animal waste caused the groundwater around the property to become saturated with nitrates.⁷ The claims in that case traveled pursuant to both the CWA and RCRA. *Id.* The Ranch moved to dismiss the RCRA claims, arguing that the CWA’s coverage of its activities precluded the RCRA claims. The court agreed:

In the instant action, Coldani has alleged that Lima Ranch is a concentrated animal feeding operation discharging solid waste (i.e., animal waste) into navigable waters from a point source (i.e., concentrated animal feeding operation). As such, Lima Ranch is

⁴ See 33 U.S.C. §1362(12).

⁵ A CAFO is defined at 40 CFR §122.23(b)-(c). The Brief of Amici Curiae National Chicken Council, U.S. Poultry and Egg Association and the National Turkey Federation provide additional discussion regarding the applicability of the Clean Water Act. See *id.*, pp. 4-7. Amici hereby adopt and incorporate that discussion by reference.

⁶ See 33 U.S.C. §1362(14); *Waterkeeper Alliance et al. v. EPA*, 399 F.3d 486 (2d Cir. 2005)(noting that discharges from land areas under the control of CAFOs are regulated by the CWA unless CAFO has attempted to ensure appropriate agricultural utilization of the nutrients in agricultural waste and a discharge is “primarily” the result of precipitation).

⁷ *Coldani*, 2007 WL 2345016, *1 (E.D. Cal., Aug. 16, 2007).

subject to a NPDES permit. Therefore, the court concludes that because the animal waste discharged by Lima Ranch constitutes industrial discharge from a point source subject to NPDES permits under the CWA, it is excluded from the definition of “solid waste” under 42 U.S.C. §6903(27).⁸

Similarly, in *Coon v. Willet Dairy, LP*, 2007 WL 2071746 (N.D.N.Y. July 17, 2007), plaintiffs asserted violations of the CWA and RCRA against Willet Dairy. The plaintiffs complained that Willet contaminated their properties by applying cow manure to its fields.⁹ Willet moved to dismiss the RCRA claims, arguing that the CWA prevented RCRA regulation. The court agreed:

RCRA establishes a regulatory scheme for treatment, disposal, or storage of solid and hazardous wastes. However, RCRA has two non-duplication provisions. First, §6905(a) provides that “nothing in this chapter shall be construed to apply to...any activity or substance which is subject to the [CWA]....” Second, §6905(b) directs the government administrator to “avoid duplication, to the maximum extent practicable,” between RCRA regulation and government regulation under CWA and other environmental acts. The Court finds that allowing Plaintiffs’ RCRA cause of action to proceed would violate the first non-duplication provision in §6905(a).¹⁰

If materials from the application of poultry litter are unlawfully discharged and thus impact the waters of the IRW, relief must be pursued under the CWA, and RCRA cannot also be applied.

II. The Court Should Abstain From Entering the Requested Injunction Because It Would Interfere With the Regulatory Schemes of Two States and Would Reward the State’s Attempts to Circumvent Its Own Laws

⁸ *Id.* at *4.

⁹ *Willet*, 2007 WL 2071746, *1.

¹⁰ *Id.* at *5-6.

Not only would the broad-sweeping injunctive relief sought here constitute an unprecedented extension of RCRA and violate the non-duplication provisions of RCRA and the CWA, it would interfere with the regulatory schemes of two states and the Court should therefore abstain from exercising jurisdiction in this case. Oklahoma and Arkansas have comprehensive legislation and administrative programs to address the issue of which the State complains. A federal court injunction would interfere with the administrative process in both states, and the blanket prohibition sought is inferior to state-based, situation-specific regulation. Furthermore, to allow the State to circumvent its own administrative procedures for addressing potential environmental contamination would be grossly unfair and erode confidence in those procedures.

A. Both Oklahoma and Arkansas, as Well as the Federal EPA, Have Comprehensive Regulatory Schemes for Preventing Water Contamination Allegedly Caused by The Land Application of Poultry Litter

Both Oklahoma and Arkansas, as well as the federal EPA, have comprehensive regulatory schemes for preventing water contamination caused by the land application of poultry litter. For example, Oklahoma's Registered Poultry Feeding Operations Act requires that poultry operations be registered and that they adhere to Best Management Plans.¹¹ The Best Management Plans, in turn, prohibit harmful discharges of poultry waste to Oklahoma waters.¹² Moreover, every poultry feeding operation is required to have an Animal Waste Management Plan which includes data regarding soil nutrient analysis, as well as land application rates based on the particular nitrogen and phosphorous content of the poultry waste.¹³ Poultry waste is only

¹¹ 2 Okl. St. Ann. §10-9.7.

¹² 2 Okl. St. Ann. §10-9.7 (B)(1).

¹³ 2 Okl. St. Ann. §10-9.7 (C)(1)-(6).

to be applied to land deemed suitable for soil amendment according to annual testing, and only at appropriate times and rates.¹⁴ The discharge and run off that the Plaintiff challenges here is prohibited.¹⁵

Arkansas regulates the land application of poultry waste in a similar way.¹⁶ In addition, both states have laws and programs to encourage the transfer of poultry litter out of areas where soil analysis indicates it is not needed into areas where it could be of benefit.¹⁷ Remedies for non-compliance are likewise provided for in the respective regulatory regimes of both states. Oklahoma law allows for administrative and criminal penalties, as well as for injunctive relief.¹⁸ Indeed, the Oklahoma Attorney General is explicitly invited to bring an action for injunctive relief to redress a violation of the Act.¹⁹ Arkansas law also allows for the imposition of administrative penalties.²⁰

B. Principles of Federal-State Comity Would be Violated if the Court Entered the Injunction the State Seeks

The injunction the State seeks is tantamount to a moratorium on the land-application of poultry litter within the IRW. Such an injunction would stand in sharp contrast to the regulatory regimes of Oklahoma and Arkansas, which regulate the limited application of poultry litter to

¹⁴ *Id.*; 2 Okl. St. Ann §10-9.7(E).

¹⁵ *Id.*; 2 Okl. St. Ann. §10-9.6 (D).

¹⁶ Arkansas' statutory and regulatory approach to the regulation of the land application of poultry litter within its borders is discussed fully in the Amicus Brief of the Arkansas Farm Bureau Federation. In the interests of brevity, AFBF adopts and incorporates that discussion by reference.

¹⁷ 2 Okl. St. Ann. §10-9.13; Ark. Code 15-20-1101 *et seq.*

¹⁸ 2 Okl. St. Ann. §10-9.11.

¹⁹ 2 Okl. St. Ann. §10-9.11(C)(1).

²⁰ Ark. Code §15-20-1113.

ensure that it complies with soil management plans based on the specific soil conditions of the land to which it is to be applied. In other words, poultry growers are in compliance with Arkansas and Oklahoma law so long as they engage in the application of poultry litter as fertilizer. If the Court enters the injunction the State seeks, poultry growers presumably will violate the Court's order if they engage in *any* land application of poultry litter, notwithstanding the determination of a state agency that a given application is beneficial. Poultry growers who have no contract with the Integrator Defendants would also violate any wholesale moratorium imposed by the Court.

These two approaches simply cannot be reconciled. A moratorium would render the regulatory regimes of the two states utterly worthless. Poultry operators who have analyzed and considered the particular nutritional needs of their soil (at much expense of time and money, to be sure) to formulate Nutrient Management Plans that comply with Arkansas law or Best Management Plans that comply with Oklahoma law would presumably violate this Court's injunction simply by doing what their respective state authorities indicated was permitted and beneficial.²¹

The State's Motion is an indirect attack on existing state procedures for addressing alleged harm caused by the land application of poultry litter. Federal courts have long been strongly averse to this type of evisceration of state regulation. "Where, as here, the exercise of authority by state officials is attacked, federal courts must be constantly mindful of the 'special delicacy of the adjustment to be preserved between federal equitable power and State

²¹ A related problem exists in that the growers are not before the Court. To summarily render their compliance with state law a violation of federal law raises grave due process concerns. *See, e.g., Coomes v. Adkinson*, 414 F.Supp. 975, 994-95 (D.C.S.D. 1976)(holding that a permittee has a property interest in a grazing permit); *Shufflebarger v. C.I.R.*, 1955 WL 643 (T.C. 1955)(treating a grazing permit as property); *In re Dunning*, 77 B.R. 789, 791 (Bankr.D.Mont. 1987)(valuing a grazing permit as property).

administration of its own law.”²² This “special delicacy” underlies the *Burford* abstention doctrine which permits a federal court to abstain where unnecessary interferences with a state’s administration of its own affairs would result. Pursuant to *Burford*, federal courts are to “restrain their authority because of scrupulous regard for the rightful independence of the state governments and for the smooth working of the federal judiciary...”²³ *Burford* abstention is therefore appropriate where the exercise of federal review of the question in a case would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern.²⁴ It cannot be disputed that this Court’s injunction would interfere with Oklahoma’s and Arkansas’ administrative procedures regulating the land application of poultry waste. In fact, it would more than interfere. It would nullify them, rendering the states unable to establish wise and coherent policies for addressing those problems.

In addition, the call for abstention is especially strong when a federal court’s interference with state law is unnecessary.²⁵ Here, the moratorium the State seeks is not necessary. The regulatory schemes of Oklahoma and Arkansas are in place: they ensure that land application of poultry litter complies with plans developed in light of the specific soil amendment needs of the areas to which it is to be applied. *See supra*, pp. 5-6. To the extent that soil analysis identifies areas in which no soil fertilization is warranted or in which it would do more harm than good, the

²² *Rizzo v. Goode*, 423 U.S. 362, 378 (1976).

²³ *Burford v. Sun Oil Co.*, 319 U.S. 315, 318 (1943).

²⁴ *See Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976).

²⁵ *Burford*, 319 U.S. at 332 (“few public interests have a higher claim upon the discretion of a federal chancellor and the avoidance of needless friction with state policies”). *See also Brooks v. Nance*, 801 F.2d 1237, 1241 (10th Cir. 1986)(citing the “scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts” and finding that principles of comity barred federal court action directed at state taxation scheme).

land application of poultry litter is prohibited under these programs just as effectively as it would be prohibited by this Court if the injunctive relief the State seeks is entered.²⁶ In short, the State has adequate remedies under state law and, under such circumstances, principles of comity require that federal courts abstain from entangling themselves in such state matters.²⁷

C. The State Should Simply Not Be Allowed to Circumvent Its Own Administrative Procedures; Such Would Render the Administrative Process Meaningless and Be Fundamentally Unfair

The argument for abstention of federal jurisdiction in this instance is particularly strong because the plaintiff is, in essence, the State. To allow a state to use the federal courts to impose a moratorium on a practice the legislature and administrative agencies of that very state view as legal would turn state administrative procedures on their heads.²⁸

Oklahoma legislation governing the land application of poultry litter expressly contemplates a state action for an injunction.²⁹ In addition, the Oklahoma Administrative Procedures Act allows for the challenge of any specific action of the agency after it is taken.³⁰

²⁶ Application of poultry litter in violation of state law is actually probably more easily redressed by the state laws rendering it unlawful than by this Court. *See supra*, pp. 5-6 (discussing required agency determinations).

²⁷ To the extent the State believes the remedies under Oklahoma state law inadequate, the appropriate response is to resort to the well-established procedures for changing them. *See infra*, pp. 9-10 (discussing Oklahoma's administrative procedures act).

²⁸ It should be noted that the Oklahoma legislature appears not to support the Plaintiff's efforts. Oklahoma SB 709, which prohibits manure from being defined or considered a hazardous waste under state law, was signed into law on April 18, 2007 and became effective as of November 1, 2007. *See* 2 Okl. St. Ann. §2-18.1 (West 2008).

²⁹ 2 Okl. St. Ann. §10-9.11 (allowing the Attorney General to bring an action in a court of competent jurisdiction for the prosecution of a violation of the Oklahoma Registered Poultry Feeding Operations Act or any rule promulgated thereto).

³⁰ 75 Okl. St. Ann. §250.10 (allowing for governor or either house of the legislature to request that an agency review its rules to determine whether or not they should be amended, repealed, or redrafted).

On a prospective basis, the State is free to participate in administrative rulemaking and notice and comment through the usual channels.³¹ The State has circumvented these procedures, however, by opting to seek a wide-ranging injunction in this Court, complete with expert witnesses and full-length factual hearings. It is as if the State is attempting to convince this Court of something that its own legislature would not accept: that a wholesale ban on the land-application of poultry litter is the best way to protect the waters within the IRW.

Federal district courts simply should not be allowed to become courts of appeal for state attorney generals who—in contrast to their own state legislatures—believe that the laws of their states are inadequate. The State is free (even invited, actually) to press its position within Oklahoma legislative and administrative channels. If it fails to do so, or fails in doing so, then it must abide by the policy set by the legislature and administrative bodies. To allow the State another bite at setting that policy is simply unfair. It has had a chance. The process of state government simply yielded another result. To allow an attack through the back door of federal court would result in a waste of resources for the federal judiciary, as well as for the states themselves. Why would any state devote its resources to developing complex, science-based regulatory schemes when any official dissatisfied with those schemes could go into federal court with his or her own body of “science” to obtain a different result? How is Oklahoma to craft and enforce a uniform state policy when its own attorney general is essentially challenging that very policy in federal court? Principles of comity, legislative and judicial efficiency, as well as basic fairness, require that the Court rebuff the State’s efforts to drag it into state policies.

³¹ 75 Okl. St. Ann. §303 (establishing notice and comment period following notice of intended rulemaking action allowing all interested persons to “submit data, views, or arguments, orally or in writing”).

III. The Extraterritorial Injunction Sought Would Subject Growers to Conflicting Standards of Conduct and Would Set a Precedent Allowing for the Complete Fractionalization of the Regulation of Poultry Practices

The IRW-wide moratorium the State seeks spans at least two states: Oklahoma and Arkansas. Both of those states, as well as the federal EPA, have legislation impacting the land application of poultry litter. If the Court enters the injunctive relief the State seeks, poultry growers within the IRW will be subject to regulation from yet another entity—this Court—on yet another basis—RCRA.

Regulation by multiple sources is problematic in that it subjects parties to incompatible standards of conduct and renders the legality of any conduct uncertain. Indeed, this principle underlies RCRA's anti-duplication provisions.³² If this Court grants the requested injunctive relief, AFBF members in the Arkansas portion of the IRW who are acting in compliance with that state's laws can be deemed to be in violation of this Court's injunction. Moreover, AFBF members within the IRW and the State of Oklahoma whose land application activities are permitted in accordance with provisions of the CWA or Oklahoma law may nevertheless be found to be in violation of this Court's injunction. Moreover, AFBF members outside the IRW would apparently not be subject to the Court's injunction, but would remain subject to the laws of their respective states. In other words, the exact same conduct could be illegal in one part of Oklahoma, but allowed in another. The overall result would be a fractured approach to the regulation of AFBF-member conduct, as well as a great deal of uncertainty on the parts of those members regarding the legality of their conduct. Basic principles of due process require more.³³

³² See 42 U.S.C. §6905(a),(b).

³³ See, e.g., *U.S. v. Agnew*, 931 F.2d 1397, 1403 (10th Cir. 1991)(due process requires that ordinary people have fair notice of what conduct is prohibited in a way that does not encourage arbitrary and discriminatory enforcement); *Colorado Public Utilities Com'n v. Harmon*, 951 F.2d 1571, 1582 (10th Cir. 1991)(the enactment of separate information and

The Court should avoid bringing about this result and setting a precedent for other courts around the country to do the same by applying the principles of *Burford* abstention and refusing to wade into this issue

IV. There is No Authority for the Application of RCRA To Land-Applied Poultry Litter; The Injunctive Relief the State Seeks Would be Unprecedented

The type of watershed-wide, prophylactic injunctive relief the State seeks is without judicial precedent. The proposed injunction pushes RCRA beyond its legislative and regulatory foundation and lacks support in the statute, the legislative history, the regulations, or EPA’s interpretation of RCRA. As it has not shown that the conduct at issue—application of poultry litter anywhere in the IRW—violates RCRA, the State’s Motion should be denied.

The State fails to cite any authority establishing that land application of any poultry litter anywhere in the IRW constitutes solid waste disposal within RCRA. It fails to point to a case from any court in which poultry litter was found to constitute “solid waste.” It fails to identify any regulation or guidance indicating that the EPA—whose interpretation of RCRA has been held to be entitled to deference³⁴—has used the statute as a basis for its efforts to prevent point source discharges and non-point source run-off from poultry operations. Indeed, legislative³⁵

documentation requirements related to shipping in jurisdictions across the country could “confound” shippers).

³⁴ See *McNamar v. Apfel*, 172 F.3d 764, 766 (10th Cir. 1999)(agency’s interpretation of the statute it administers is entitled to controlling weight unless arbitrary, capricious, or contrary to law).

³⁵ H. Rep. No 94-1491 (1976) *reprinted in* 1976 U.S.C.C.A.N (emphasis added)(“[a]gricultural wastes which are returned to the soil as fertilizer or soil conditioners *are not considered discarded material* in the sense of this legislation”).

and regulatory³⁶ materials show that RCRA was not intended to apply to the application of poultry litter—or similar material—returned to the soil as fertilizer.

The State's contention that the fertilization exception does not apply is based on blanket assertions that none of the soil within any portion of the IRW can benefit from the application of any amount of poultry litter. Even assuming that this is true for *some* portion of the soil within the IRW, it is not possible to prove that it is true for *all* of the soil within the IRW. Amici members who apply litter to soil on their own farms would attest to a benefit to that soil. If granted, the injunction sought would encompass even those applications of poultry litter which are beneficial to the land and therefore are exempt from regulation pursuant to RCRA. The State has failed to offer any authority that RCRA reaches otherwise lawful behavior specifically exempted from its reach. The Court should therefore abstain from applying RCRA in this case.

CONCLUSION

For the foregoing reasons, the Court should abstain from exercising its jurisdiction in this case and should dismiss the State's motion.

s/Jessica E. Rainey
Barry G. Reynolds, OBA #13202
reynolds@titushillis.com
Jessica E. Rainey, OBA #18296
[jraine@titushillis.com](mailto:jrainey@titushillis.com)
TITUS HILLIS REYNOLDS LOVE
DICKMAN & MCCALMON
15 E. Fifth St., Ste. 3700
Tulsa, Oklahoma 74103
(918) 587-6800 FAX: (918) 587-6822

Local Associated Counsel

AND

³⁶ See, e.g., 40 CFR §257.1(c)(1), which sets forth the criteria for classification of solid waste disposal facilities and practices, states that those “criteria do not apply to agricultural wastes...returned to the soil as fertilizers or soil conditioners.”

OF COUNSEL:

William S. Cox, III (COX018)

Nikaa B. Jordan (JOR036)

LIGHTFOOT, FRANKLIN & WHITE, L.L.C.

The Clark Building

400 North 20th Street

Birmingham, Alabama 35203-3200

(205) 581-0700

(205) 581-0799 (fax)

Attorneys for Amici Curiae

American Farm Bureau Federation and

National Cattlemen's Beef Association

CERTIFICATE OF MAILING

A. I hereby certify that on this February 15, 2008, I electronically transmitted the foregoing document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

- **Jo Nan Allen**
jonanallen@yahoo.com,bacaviola@yahoo.com
- **Frederick C Baker**
fbaker@motleyrice.com,mcarr@motleyrice.com,fhmorgan@motleyrice.com
- **Tim Keith Baker**
tbakerlaw@sbcglobal.net
- **Sherry P Bartley**
sbartley@mwsgw.com,jdavis@mwsgw.com
- **Woody Bassett**
wbassett@bassettlawfirm.com
- **Michael R. Bond**
michael.bond@kutakrock.com
- **Douglas L Boyd**
dboyd31244@aol.com
- **Vicki Bronson**
vbronson@cwlaw.com,lphillips@cwlaw.com
- **Paula M Buchwald**
pbuchwald@ryanwhaley.com,dmaple@ryanwhaley.com
- **Louis Werner Bullock**
lbullock@bullock-blakemore.com,bdejong@bullock-blakemore.com,nhodge@bullock-blakemore.com
- **LeAnne Turner Burnett**
burnettl@crowedunlevy.com,ECFT@crowedunlevy.com,kenneyj@crowedunlevy.com
- **A Michelle Campney**
campneym@wwhwlaw.com,steelmana@wwhwlaw.com
- **Michael Lee Carr**
hm@holdenoklahoma.com,MikeCarr@HoldenOklahoma.com
- **Gary S Chilton**
gchilton@hcdattorneys.com
- **Lloyd E Cole , Jr**
colelaw@alltel.net,amy_colelaw@alltel.net,gloriaeubanks@alltel.net
- **Robin S Conrad**
rconrad@uschamber.com
- **Angela Diane Cotner**
AngelaCotnerEsq@yahoo.com
- **Reuben Davis**
rdavis@boonesmith.com
- **Jim DePriest**
jim.depriest@arkansasag.gov
- **John Brian DesBarres**
mrjbdb@msn.com

- **W A Drew Edmondson**
fc_docket@oag.state.ok.us,suzy_thrash@oag.state.ok.us.,drew_edmondson@oag.state.ok.us
- **Delmar R Ehrich**
dehrich@faegre.com,qsperrazza@faegre.com,kcarney@faegre.com,dherber@faegre.com
- **John R Elrod**
jelrod@cwlaw.com,vmorgan@cwlaw.com
- **William Bernard Federman**
wfederman@aol.com,ngb@federmanlaw.com,law@federmanlaw.com
- **Fidelma L Fitzpatrick**
ffitzpatrick@motleyrice.com,lgrande@motleyrice.com
- **Richard C Ford**
fordr@crowedunlevy.com,ECFT@crowedunlevy.com,kenneyj@crowedunlevy.com
- **Bruce Wayne Freeman**
bfreeman@cwlaw.com,lclark@cwlaw.com
- **Ronnie Jack Freeman**
jfreeman@grahamfreeman.com
- **Richard T Garren**
rgarren@riggsabney.com,dellis@riggsabney.com
- **Dorothy Sharon Gentry**
sgentry@riggsabney.com,jzielinski@riggsabney.com
- **Robert W George**
robert.george@kutakrock.com,bethany.wicker@kutakrock.com,sue.arens@kutakrock.com
- **Tony Michael Graham**
tgraham@grahamfreeman.com
- **James Martin Graves**
jgraves@bassettlawfirm.com
- **Michael D Graves**
mgraves@hallestill.com,smurphy@hallestill.com,jspring@hallestill.com
- **Jennifer Stockton Griffin**
jgriffin@lathropgage.com,cshoemaker@lathropgage.com
- **Carrie Griffith**
griffithlawoffice@yahoo.com
- **John Trevor Hammons**
Trevor_Hammons@oag.state.ok.us,Jean_Burnett@oag.state.ok.us,fc_docket@oag.state.ok.us
- **Lee M Heath**
lheath@motleyrice.com
- **Michael Todd Hembree**
hembreelaw1@aol.com,traesmom_mdl@yahoo.com
- **Theresa Noble Hill**
thillcourts@rhodesokla.com,mnave@rhodesokla.com
- **Philip D Hixon**
phixon@mhla-law.com

- **Mark D Hopson**
mhopson@sidley.com,joraker@sidley.com
- **Kelly S Hunter Burch**
kelly_burch@oag.state.ok.us,fc_docket@oag.state.ok.us,jean_burnett@oag.state.ok.us
- **Tina Lynn Izadi**
tina_izadi@oag.state.ok.us,fc_docket@oag.state.ok.us,freda_montgomery@oag.state.ok.us
- **Thomas Janer**
SCMJ@sbcglobal.net,lanaphillips@sbcglobal.net,tjaner@cableone.net
- **Stephen L Jantzen**
sjantzen@ryanwhaley.com,jlee@ryanwhaley.com,mkeplinger@ryanwhaley.com
- **Mackenzie Lea Hamilton Jessie**
maci.tbakerlaw@sbcglobal.net,macijessie@yahoo.com,tbakerlaw@sbcglobal.net
- **Bruce Jones**
bjones@faegre.com,cdolan@faegre.com,dybarra@faegre.com
- **Jay Thomas Jorgensen**
jjorgensen@sidley.com,vshort@sidley.com
- **Krisann C. Kleibacker Lee**
kklee@faegre.com,mlokken@faegre.com
- **Derek Stewart Allan Lawrence**
hm@holdenoklahoma.com,DerekLawrence@HoldenOklahoma.com
- **Raymond Thomas Lay**
rtl@kiralaw.com,dianna@kiralaw.com
- **Daniel Patrick Lennington**
daniel.lennington@oag.ok.gov
- **Jennifer E Lloyd**
jlloyd@bassettlawfirm.com
- **Nicole Marie Longwell**
nlongwell@mhla-law.com,lvictor@mhla-law.com
- **Dara D Mann**
dmann@faegre.com,jrock@faegre.com,ekim@faegre.com
- **Linda C Martin**
lmartin@dsda.com,mschooling@dsda.com
- **Archer Scott McDaniel**
smcdaniel@mhla-law.com,jwaller@mhla-law.com
- **Thomas James McGeady**
tjmcgeady@loganlowry.com
- **Robert Park Medearis , Jr**
medearislawfirm@sbcglobal.net
- **James Randall Miller**
rmiller@mkblaw.net,clagrone@mkblaw.net
- **Craig A Mirkes**
cmirkes@mhla-law.com,jwaller@mhla-law.com
- **Charles Livingston Moulton**
Charles.Moulton@arkansasag.gov,Kendra.Jones@arkansasag.gov

- **Mark Richard Mullins**
richard.mullins@mcafeetaft.com,allison.mack@mcafeetaft.com
- **Robert Allen Nance**
rnance@riggsabney.com,jzielinski@riggsabney.com
- **William H Narwold**
bnarwold@motleyrice.com,imoll@motleyrice.com
- **John Stephen Neas**
steve_neas@yahoo.com
- **George W Owens**
gwo@owenslawfirmmpc.com,ka@owenslawfirmmpc.com
- **David Phillip Page**
dpape@riggsabney.com,sboudreaux@riggsabney.com
- **Michael Andrew Pollard**
mpollard@boonesmith.com,kmiller@boonesmith.com,pmappin@boonesmith.com
- **Marcus N Ratcliff**
mratcliff@lswsl.com,sshanks@lswsl.com
- **Robert Paul Redemann**
rredemann@pmrlaw.net,psmith@pmrlaw.net
- **Melvin David Riggs**
driggs@riggsabney.com,jsummerlin@riggsabney.com
- **Randall Eugene Rose**
rer@owenslawfirmmpc.com,ka@owenslawfirmmpc.com
- **Michael G Rousseau**
mrousseau@motleyrice.com,lgrande@motleyrice.com
- **Patrick Michael Ryan**
pryan@ryanwhaley.com,jmickle@ryanwhaley.com,amcpherson@ryanwhaley.com
- **Robert E Sanders**
rsanders@youngwilliams.com
- **David Charles Senger**
dsenger@pmrlaw.net,ecf@pmrlaw.net
- **Jennifer Faith Sherrill**
jfs@federmanlaw.com,ngb@federmanlaw.com,law@federmanlaw.com
- **Michelle B Skeens**
hm@holdenokla.com,mskeens@holdenokla.com
- **William Francis Smith**
bsmith@grahamfreeman.com
- **Leslie Jane Southerland**
ljsoutherlandcourts@rhodesokla.com,mnave@rhodesokla.com
- **Monte W Strout**
strout@xtremeinet.net
- **Texas Association of Dairymen**
richard.mullins@mcafeetaft.com
- **Texas Cattle Feeders Association**
richard.mullins@mcafeetaft.com
- **Texas Farm Bureau**
richard.mullins@mcafeetaft.com

- **Texas Pork Producers Association**
richard.mullins@mcafeetaft.com
- **Erin Walker Thompson**
Erin.Thompson@kutakrock.com
- **Paul E Thompson , Jr**
pthompson@bassettlawfirm.com
- **Colin Hampton Tucker**
chtucker@rhodesokla.com,scottom@rhodesokla.com
- **John H Tucker**
jtuckercourts@rhodesokla.com,gbarber@rhodesokla.com,lwhite@rhodesokla.com
- **Kenneth Edward Wagner**
kwagner@lswsl.com,sshanks@lswsl.com
- **Todd P Walker**
twalker@faegre.com
- **Elizabeth C Ward**
lward@motleyrice.com
- **Sharon K Weaver**
sweaver@riggsabney.com,lpearson@riggsabney.com
- **Timothy K Webster**
twebster@sidley.com,jwedeking@sidley.com
- **Terry Wayen West**
terry@thewestlawfirm.com
- **Dale Kenyon Williams , Jr**
kwilliams@hallestill.com,smurphy@hallestill.com,jspring@hallestill.com
- **Edwin Stephen Williams**
steve.williams@youngwilliams.com
- **Douglas Allen Wilson**
Doug_Wilson@riggsabney.com,jsummerlin@riggsabney.com
- **P Joshua Wisley**
jwisley@cwlaw.com
- **J Ron Wright**
ron@wsfw-ok.com,susan@wsfw-ok.com
- **Elizabeth Claire Xidis**
cxidis@motleyrice.com
- **Lawrence W Zeringue**
lzingue@pmrlaw.net,scouch@pmrlaw.net

B. I hereby certify that on February 15, 2008, I served the foregoing document by US Mail, postage prepaid, on the following who are not registered participants of the ECF System

Justin Allen

Office of the Attorney General
(Little Rock)
323 Center St
Ste 200
Little Rock, AR 72201-2610

Randy Allen

Route 1, Box 477
Jay, OK 74346

Jim Bagby

RR 2, Box 1711
Westville, OK 74965

David Gregory Brown

Lathrop & Gage LC
314 E HIGH ST
JEFFERSON CITY, MO 65101

Certain Poultry Growers

320 South Boston Avenue
Suite 400
Tulsa, OK 74103-3708

Gordon W. Clinton

23605 S GOODNIGHT LN
WELLING, OK 74471

Susann Clinton

23605 S GOODNIGHT LN
WELLING, OK 74471

Eugene Dill

P O BOX 46
COOKSON, OK 74424

Marjorie Garman

5116 Highway 10
Tahlequah, OK 74464

James C Geiger

address unknown
,

Thomas C Green

Sidley Austin Brown & Wood LLP
1501 K ST NW
WASHINGTON, DC 20005

G Craig Heffington

20144 W SIXSHOOTER RD
COOKSON, OK 74427

Cherrie House

P O BOX 1097
STILWELL, OK 74960

William House

P O BOX 1097
STILWELL, OK 74960

**John E. and Virginia W. Adair
Family Trust**

RT 2 BOX 1160
STILWELL, OK 74960

Dorothy Gene Lamb

Route 1, Box 253
Gore, OK 74435

James Lamb

Route 1, Box 253
Gore, OK 74435

Jerry M Maddux

Selby Connor Maddux Janer
P O BOX Z
BARTLESVILLE, OK 74005-5025

Doris Mares

P O BOX 46
COOKSON, OK 74424

Dustin McDaniel

Office of the Attorney General
(Little Rock)
323 Center St
Ste 200
Little Rock, AR 72201-2610

Jonathan D Orent

Motley Rice LLC (Providence)
321 S MAIN ST
PROVIDENCE, RI 02940

Donna S Parker

34996 S 502 RD
PARK HILL, OK 74451

Richard E Parker

34996 S 502 RD
PARK HILL, OK 74451

Victor E Schwartz

Shook Hardy & Bacon LLP (Washington
DC)
600 14TH ST NW STE 800
WASHINGTON, DC 20005-2004

Cary Silverman

Shook Hardy & Bacon LLP (Washington
DC)
600 14TH ST NW STE 800
WASHINGTON, DC 20005-2004

C Miles Tolbert

Secretary of the Environment
State of Oklahoma
3800 NORTH CLASSEN
OKLAHOMA CITY, OK 73118

Gary V Weeks

Bassett Law Firm
P O Box 3618
Fayetteville, AR 72702

Robin L. Wofford

Rt 2, Box 370
Watts, OK 74964

/s/Jessica E. Rainey